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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

OKEZIE AUGUSTUS ORJI,

Defendant and Appellant.

G047057

(Super. Ct. No. 12CF0571)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed.

Allison K. Simkin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

We appointed counsel to represent Okezie Augustus Orji on appeal. Counsel filed a brief that set forth the facts of the case. Counsel did not argue against her client, but advised the court no issues were found to argue on his behalf. Orji was given 30 days to file written argument on his own behalf. That period has passed, and we have received no communication from him.

Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), to assist the court in conducting its independent review, counsel provided the court with information as to issues that might arguably support an appeal. Counsel listed as possible but not arguable issues: (1) whether there was sufficient evidence to convict Orji of theft; and (2) whether there was sufficient evidence to support a finding Orji had suffered three prior theft convictions pursuant to Penal Code section 666.¹

We have reviewed the information provided by counsel and have independently examined the record. We found no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) The judgment is affirmed.

FACTS

Javier Corea, the owner of Recycle Tech Digital Salvage, reported a laptop stolen from his store on June 7, 2011. Corea reported security cameras recorded the theft of the laptop. The video was presented to the jury at trial, and Corea identified Orji in the video. Corea testified Orji had been in his store many times prior to June 7. The video from June 7 showed Orji being in the store for approximately five minutes. He initially is seen interacting with a store employee by the name of Israel Olivera, and later standing in front of a glass cabinet. The area in front of the glass cabinet is a public area, but the area behind is not. Laptops, routers, and other equipment are kept in the glass cabinet. The video shows no employees present as Orji stretches to reach his left hand and then his

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All further statutory references are to the Penal Code.

right hand over and behind the glass cabinet. He is next seen reaching back and adjusting his pants.

Shortly thereafter, Olivera returns and he and Orji appear to engage in conversation for a few moments. When the employee leaves a second time, Orji is observed pacing back and forth in the vicinity of the glass cabinet. As the only other customer in the store walks away, Orji reaches around the back of the glass cabinet and retrieves a laptop and sets it on the counter. Orji leaves the laptop on the counter and appears to be speaking with the other customer who has returned to the area. When that customer again walks away, Orji steps in front of the counter where the laptop is located and reaches both hands around behind him. When Orji steps away, the laptop is no longer on the counter, and Orji is seen vigorously adjusting the back of his pants. When the employee returns, Orji appears to speak with the employee for a few seconds and then immediately leaves the store.

After Orji leaves the store, Olivera advised Corea a laptop valued at between \$200 and \$300 was missing. Olivera testified the laptop was there before Orji came into the store and gone after he left. Orji was not given permission to remove any items from the glass cabinet.

The jury convicted Orji of one count of theft with a prior conviction (§§ 666, subd. (a), 484, subd. (a), 488-count 1). In addition to the theft count, the information alleged the following: Orji had suffered five prior theft convictions pursuant to sections 484, subdivision (a), and 488; a prior strike pursuant to sections 667, subdivisions (d) and (e)(1), and 1170.12, subdivisions (b) and (c)(1); and two prison priors pursuant to section 667.5, subdivision (b). The court granted Orji's motion to bifurcate the trial and hear the priors separately.

After the jury convicted Orji of the theft count, he waived his right to a jury trial on the alleged priors. After receiving evidence and hearing argument from counsel, the trial court initially found true beyond a reasonable doubt two of the priors alleged in

count one. After being advised by the prosecutor that a finding on only two of the alleged priors would result in a misdemeanor conviction rather than a felony, the court indicated it had only looked at exhibit Nos. 1 and 2 and would now look at exhibit No. 3. After reviewing exhibit No. 3, the prosecutor addressed the issue of the name variances within exhibit No. 3. The court then found true beyond a reasonable doubt the two additional prior convictions reflected in exhibit No. 3. The court granted the prosecution's motion to strike the remaining prior.

Orji admitted having suffered the alleged strike prior and prison priors. The court granted Orji's *Romero* motion,² finding the current felony was not violent and was not a crime against a person. The court sentenced Orji to the low term of 16 months in state prison on count one, plus an additional year on one prison prior for a total term of 28 months in state prison. The court struck the remaining priors for the purpose of sentencing.

DISCUSSION

Pursuant to *Anders*, counsel raised two possible issues. We will address each in turn.

I. Sufficient Evidence of Theft

Counsel questioned whether there was sufficient evidence to convict Orji of theft. “The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]”

² A “*Romero* motion” is a motion to dismiss a strike prior in the interest of justice. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.)

(*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We must determine whether the evidence supporting the verdict is reasonable, credible, and of solid value. We do not reweigh the evidence. (*Ibid.*) “Direct proof of . . . theft is not necessary; [it] may be proved by circumstantial evidence.” (*People v. Kross* (1952) 112 Cal.App.2d 602, 610.)

Here, there is substantial circumstantial evidence that Orji took and carried away the missing laptop. Corea identified Orji as a person who had been in his store many times prior to June 7. The video from June 7 showed Orji being in the store for a total of approximately five minutes. He is first observed standing in front of the glass cabinet where the missing laptop was last seen. The video shows Orji reaching over and around the glass cabinet on two different occasions. Between the first and second occasions, he paces in front of the glass cabinet. He then reaches around the cabinet, retrieves a laptop, and places it on the cabinet. Shortly thereafter, he is seen vigorously adjusting his pants and the laptop is not seen again.

This is simply not a case of first you see the laptop and now you do not. The prosecutor’s argument Orji reached around and shoved the laptop down his pants is an entirely reasonable explanation of what is depicted in the video. Orji appears to be pacing waiting for the other customer to walk away. That Orji is observed leaving the store promptly after this activity, and that the laptop is discovered missing immediately after Orji leaves the store, is further circumstantial evidence Orji took the laptop without permission. We conclude substantial evidence supports the theft conviction.

II. Sufficient Evidence to Support a Finding of at Least Three Prior Theft Convictions

In addressing a challenge to the sufficiency of the evidence supporting a conviction, the reviewing court “must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence - - evidence that is reasonable, credible and of solid value - - such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980)

26 Cal.3d 557, 578.) We defer to the trial court's factual findings if they are supported by substantial evidence. (*People v. Ravaux* (2006) 142 Cal.App.4th 914, 917, 919.)

Although the record demonstrates the court initially did not find there was sufficient evidence to support three prior convictions, the court candidly admitted it had only looked at exhibit Nos. 1 and 2 and would then look at exhibit No. 3. Counsel was then given an opportunity to argue the relative weight to be given the variances within exhibit No. 3. Having reviewed exhibit No. 3 and having heard counsel's argument, the court found true beyond a reasonable doubt the two additional prior convictions reflected in exhibit No. 3. Viewed in its totality, the record before the trial court provided substantial evidence from which a trier of fact could reasonably conclude Orji was the same individual who suffered the prior convictions in exhibit No. 3.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.